

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ALICE ASHBURN, ADMX. OF THE
ESTATE OF AARON M. RICHARDSON
2705 Carbon Avenue
P.O. Box 2053
Sandusky, Ohio 44870

Plaintiff,

v.

GENERAL NUTRITION CENTERS, INC.
300 Sixth Avenue
Pittsburgh, PA 15222

and

GNC CORPORATION
300 Sixth Avenue
Pittsburgh, PA 15222

and

GENERAL NUTRITION CORPORATION
300 Sixty Avenue
Pittsburgh, PA 15222

Defendants.

Case No.: 3:06-CV-2367

Judge David A. Katz

FIRST AMENDED COMPLAINT

(Jury Demand Endorsed Hereon)

1. Alice Ashburn, the duly appointed Administratrix of Aaron Richardson who died September 15, 2004, brings this wrongful death action on behalf of the statutory beneficiaries and other next-of-kin of her decedent.

2. Defendants, General Nutrition Centers, Inc. is a Pennsylvania corporation with a principal place of business in Pennsylvania. General Nutrition Centers, Inc., a wholly owned subsidiary of GNC Corporation, is a retailer of nutritional supplements. GNC Corporation

and/or General Nutrition Centers, Inc. manufactures, markets and distributes nutritional supplements, sports nutrition products and specialty supplements throughout the United States, including Ohio. Defendant General Nutrition Centers, Inc. markets, distributes and sells these products throughout the United States, including Ohio. Both defendants do substantial business in Ohio and have sufficient contacts in Ohio for purposes of long arm jurisdiction. These defendants will be collectively referred to as GNC unless separately designated or discussed.

3. Defendant General Nutrition Corporation owns stores in Ohio including one at the Sandusky Mall in Erie County, Ohio where the three defendants collectively and/or separately market, sell and distribute their products. Plaintiff's decedent purchased the subject product, Creatine Burst on or about July 12, 2004 at this location in Erie County, Ohio. The product giving rise to this suit was a proximate cause of dehydration which led to Aaron Richardson's death.

4. Plaintiff's decedent, Aaron Richardson, was a star athlete while attending Perkins High School. In September of 2004, Aaron made the Bowling Green State University football team as a freshman "walk on."

5. On September 15, 2004, Aaron began experiencing cramping in his legs while performing a running drill called "gassers." The cramping gradually spread throughout his whole body leading to cardiopulmonary arrest and death. At autopsy it was determined that Aaron had sickle cell trait which transformed into a sickle cell crises due to the dehydration caused by Aaron's consumption of Creatine Burst.

6. GNC did not advise or warn users of Creatine Burst that consumption of this product had a dehydrating effect. In fact, there are no warnings or advisories whatsoever on or provided with the product. GNC also did not advise or warn users of Creatine Burst that

consumption or use of its product can cause dehydration which could lead to a person with sickle cell trait experiencing a sickle cell crisis.

7. The Creatine Burst Aaron consumed was manufactured, marketed, supplied, distributed and sold by defendants GNC. These defendants are in the business of developing, manufacturing, selling and supplying nutritional supplements which reach the consumer in the same condition in which they are sold. The Creatine Burst developed, manufactured, supplied and sold by GNC was defective and unreasonably dangerous to users, including Aaron Richardson, in violation of Ohio's product liability laws codified at R.C. §2307.71 *et seq.*, including, but not limited to:

- A. Defective design, formulation, manufacture, production, construction, creation, assembly, testing or marketing of the product;
- B. inadequate warnings or instructions regarding its use, including post-marketing warnings or instructions; and
- C. the product did not conform to a representation made when it left the control of the manufacturer.

8. GNC represented to consumers and users of Creatine Burst that it was safe for its intended use when it knew or should have known that it was not. GNC knew or should have known of the potential for serious injury to a user by causing dehydration and/or exacerbate dehydration and transform sickle cell trait into sickle cell crisis.

9. By not informing consumers and users of the risks associated with this product, GNC was negligent. Defendants failed to adequately warn of the risks set forth above in violation of R.C. 2307.76. GNC also failed to provide adequate post-marketing warnings of the risks involved in this product's use.

10. Defendant General Nutrition Corporation is also a supplier of the subject product. This defendant is liable as a supplier pursuant to R.C. 2307.78. General Nutrition Corporation

was negligent in failing to provide any warning about this product as referenced herein. Moreover, this product when it left this defendant's control, did not conform to representations made. Furthermore, plaintiff alleges as a separate basis of liability for this defendant is a supplier which was owned in whole or in part by the manufacturer of the product and/or this defendant marketed the product under its own label or trade name.

11. Defendants' defective product and negligence was a proximate cause of Aaron Richardson's death and the damages set forth below.

12. As a further direct and proximate cause of the negligent conduct of the three defendants and their omissions, the statutory beneficiaries and other next-of-kin of Aaron Richardson have sustained:

- A. The loss of support from the reasonably expected earning capacity of Aaron;
- B. the loss of services of Aaron;
- C. the loss of society, companionship, consortium, care, assistance, attention, protection, advice, counsel, guidance, instruction, training and education of Aaron; and
- D. mental anguish.

13. In addition, plaintiff seeks recovery of the funeral and burial expenses incurred.

WHEREFORE, plaintiff Alice Ashburn, Admx. of the Estate of Aaron Richardson prays for judgment against defendants General Nutrition Centers, Inc., GNC Corporation and General Nutrition Corporation for compensatory damages in a sum in excess of Twenty Five Thousand Dollars (\$25,000.00) plus her costs herein, interest and any other relief which the court deems just and equitable.

Respectfully submitted,

/s/Michael T. Murray
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Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby demands trial by jury of this cause

CERTIFICATION

This is to certify that a copy of the foregoing *First Amended Complaint* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic system. Parties may access the filing through the Court's system on this 25th day of October, 2006.

It has been agreed that service for newly-named defendant General Nutrition Corporation will be accepted by Douglas D. Haloftis and Joanne Early at Gardere Wynne Sewell, LLP, 1601 Elm Street, Suite 3000, Dallas, Texas 75201-4761 by facsimile. This is to certify that a copy of the foregoing *First Amended Complaint* has been sent to Douglas D. Haloftis and Joanne Early via facsimile at No. 214-999-4667 this 25th day of October, 2006.

/s/Michael T. Murray
Michael T. Murray (000-8827)
MURRAY & MURRAY CO., L.P.A.